No. 98-9913-CFX Title: Donald H. Brancato, Petitioner
v.
Priscilla F. Gunn, et al.

Docketed: June 18, 1999 Court: United States Court of Appeals for the Eighth Circuit

Entry	Date	Proceedings and Orders
	May 26 1999	Petition for writ of certiorari and motion for leave to proceed in forma pauperis filed. (Response due July 18, 1999)
	May 26 1999	Motion of petitioner for leave to proceed in forma pauperis filed.
	Jul 29 1999	DISTRIBUTED. September 27, 1999
	Oct 4 1999	REDISTRIBUTED. October 8, 1999
	Oct 12 1999	Motion of petitioner for leave to proceed in forma pauperis DENIED. See Rule 39.8. Petitioner is allowed until November 2, 1999, within which to pay the docketing fee required by Rule 38(a) and to submit a petition in compliance with Rule 33.1 of the Rules of this Court. Dissenting opinion by Justice Stevens. Opinion per curiam. (Detached opinion.)
	Nov 1 1999	Motion of petitioner for reconsideration of order denying leave to proceed in forma pauperis filed.
	Nov 3 1999	REDISTRIBUTED. November 24, 1999

1 pp

(2)

No. 98-9918

Supreme Court, U.S.
MAY 2 6 1999
OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1998

DONALD H. BRANCATO - PETITIONER

VS.

PRISCILLA F. GUNN and EVANS & DIXON LAW PARTNERSHIP - RESPONDENTS

MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*

The petitioner asks leave to file the attached petition for a writ of certiorari without prepayment of costs and to proceed *in forma pauperis*.

Petitioner has previously been granted leave to proceed *in forma pauperis* in this Supreme Court of the United States in petition 96-7436, 97-9235, 98-7144, 98-7267, 98-8581, and 98-8822.

Petitioner's affidavit or declaration in support of this motion is attached hereto.

RECEIVED
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SUPREME COURT, U.S.

Donald H. Brancato
(Signature)

26 pp
(10)

98-9913

DECLARATION
IN SUPPORT OF MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*

I, Donald H. Brancato, am the petitioner in the above-entitled case. In support of my motion to proceed without being required to prepay fees, costs or give security therefor, I state that because of my poverty I am unable to pay the costs of this case or to give security therefor; and I believe I am entitled to redress.

I further affirm that the responses I have made below, including responses to the questions and instructions below relating to my ability to pay the costs of proceeding in this Court are true.

1. I am presently employed, however, I have had no salary or wages since June of 1996. I am currently employed by Donald H. Brancato, Inc. at 11863 Benham Road, St. Louis, MO, 63138, but volunteer my services to my employer without compensation, salary or wages .

2. In the past twelve months, I have had no salary or wages, nor any other income from any employment, and neither have I had any income from any rents, interest, dividends or any other sources.

3. I have no personal checking or savings accounts. My wife and I share a joint checking and savings account at United Missouri Bank which she maintains. The savings account is less than $1000. The checking account, now supported by her income, is used pay daily living expenses, and has had over many years had less than $300 - $500 average daily balance,

4. I have no personal assets, including no real estate, stocks, bonds, notes, or other valuable property. My wife and I, jointly own our automobile. I have an undriveable 1967 Mustang with an estimated value of less than $250. The approximate value of all of my personal assets is less than $1000. I do not own any shares of my employer. My wife is employed at North County Christian School, Fergus on, MO, 63135.

5. I have five dependent children, all still in school.

I declare under penalty of perjury that the foregoing is true and correct.
Executed on: May 24, 1999.

Donald H. Brancato
(Signature)

No. 98-9913

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1998

OFFICE OF THE CLERK

DONALD H. BRANCATO - PETITIONER

VS.

PRISCILLA F. GUNN and EVANS & DIXON LAW PARTNERSHIP - RESPONDENTS

ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI

PETITION FOR WRIT OF CERTIORARI

Donald H. Brancato
11863 Benham Road, Suite 102
St. Louis, Missouri 63138
(314) 355-8642
(314) 355-8688 FAX

QUESTIONS PRESENTED

1. Can the common law or any action of the court in any jurisdiction, Federal or state, be contrary to statute, or stand so as to obstruct the constitutional intent to establish equal justice for all?

2. Can the fundamental intent of the Constitution of the United States to establish equal "justice for all", in any matter, civil or criminal, in any jurisdiction, be denied in any court because any person is unable to afford representation by a licensed attorney?

3. Contrary to discrimination in favor of, and the unjust protection of those of all professions licensed in the public trust; under the constitutional mandate to establish justice for all, is it not obligatory and requisite for all courts, by their own action, to protect the common citizen, unschooled and/or unlicensed in those professions, from injury, damage, or violations of the rights and privileges guaranteed by the Constitution by those who are held to a higher standard; preventing those trained or educated from using their license as a weapon against the public?

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

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No.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1998

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

Donald H. Brancato
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(314) 355-7717
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OPINIONS BELOW

The opinions of the U.S. Court of Appeals for the Eight Circuit, and U.S. District Court for the Eastern District of Missouri -St. Louis, appear at Appendices A and B, respectively.

A timely petition for rehearing was denied by the U.S. Court of Appeals for the Eight Circuit on April 27, 1999, and is attached as Appendix C.

JURISDICTION

The U.S. Court of Appeals decided my case on March 30, 1999 and denied a rehearing of my case on April 27, 1999. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Constitution, Preamble

We, the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.

U.S. Constitution, Article VI, Paragraph 2

This constitution and the laws of the United States which shall be made in pursuance thereof, and all treaties made or which shall be made under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the constitution or laws of any state to the contrary not withstanding.

U.S. Constitution, Amendment XIV, Section 1

All persons born or naturalized in the United States and subject to the jurisdiction thereof are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any state deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

This Petitioner seeks relief from this Court arguing that the U.S. District Court improperly dismissed his case against the Respondents, by misconstruing his pleading, in order to protect, by prejudice and discrimination against the plaintiff, a fellow member of the Missouri bar and, most egregiously, an immediate family member of a U.S. District judge sitting on the bench of the court dismissing his just cause. The court dismissing this petitioner's cause, additionally, had evidence in its own record to indicate to any reasonable person that questions of fact existed sufficient to mandate a trial to establish justice by due process.

This common citizen submits that the intent of the U.S. Constitution, as unequivocally stated in the Preamble, is to "establish justice". Further, and most abhorrent to the "supreme law of the land" is the uncontroverted fact that it is the clear, unequivocal intent of the framers of the Constitution of the United States to base our order of law on the Ten Commandments of God; that there are absolutes of our law defined by the Creator of all; and that God by higher, immutable Law, as evinced in the natural order, ordained "unalienable rights" for all. This Supreme Court need only to turn its head to look at the words inscribed on the wall above and behind the Chief Justice to validate that conclusion. The success of our government and particularly the order of our law are wholly dependent on their foundation of Truth.

A. THE FACTS MATERIAL TO THE QUESTIONS PRESENTED TO THIS COURT, SUBMITTED UNDER OATH AND PENALTY OF PERJURY, ARE:

1. The petition to the U.S. District Court was submitted in the form of an affidavit, under

oath and penalty of perjury.

2. The U.S. District Court had the libelous document on its record as submitted by the personal respondent, evincing the respondent's knowing and malicious purpose to injure this petitioner by false witness before the Court by libel.

3. Additionally, the Court had on its record evidence that the respondents had every reason to question the truth of their repeated libelous and slanderous statements, long before presenting them again to the U.S. District Court, injuring and damaging this petitioner.

B. STATEMENT OF FACTS

The U.S. District Court, in cause No. 4:98CV1547 CEJ, dismissed this Petitioner's just cause by misconstruing his pleading so as to give false grounds for dismissal. This lay person, now petitioning this highest court in our land, even tried to correct the wording in an amended petition, but to no avail. Brought seeking remedy for the injury sustained as a consequence of libel, the court had reason to question even the malicious intent of the respondents, because of the repeated occurrence of the libel and slander. Despite repeated warnings to the respondents of the false witness, Priscilla F. Gunn ("Gunn") persisted in wrongfully attacking the petitioner before the court by libeling him on the record of the U.S. District Court.

REASONS FOR GRANTING THE WRIT

I.

THE CONSTITUTION OF THE UNITED STATES CLEARLY DEFINES THE JUDICIAL FUNCTION TO "ESTABLISH JUSTICE", EQUALLY FOR ALL.

U.S. Const., Preamble

U.S. Const., Art. VI, Par. 2

U.S. Const., Amd. XIV § 1

II.

THE U.S. DISTRICT COURT VIOLATED THE FEDERAL RULES OF CIVIL PROCEDURE (U.S. CODE, APPENDIX) IN MISCONSTRUING HIS PETITION

F.R.C.P., Ch. III, Rule 8

III.

THE U.S. COURT OF APPEALS FOR THE EIGHTH CIRCUIT IGNORED ITS OWN PRECEDENTS, AND THE PRECEDENTS OF OTHER CIRCUITS IN SUSTAINING THE DISTRICT COURT.

Simmons v. O'Brien, 77 F.3d 1093 (8th Cir.1996)

Sondel v. Northwest Airlines, Inc., 56 F.3d 934 (8th Cir. 1995)

Ruotolo v. IRS, 28 F.3d 6 (2nd Cir. 1994)

Lewis v. Faulkner, 689 F.2d 100, 102 (7th Cir. 1982)

I.

THE CONSTITUTION OF THE UNITED STATES CLEARLY DEFINES THE JUDICIAL FUNCTION TO "ESTABLISH JUSTICE".

Since it was the intention of those representatives of the people that did "ordain and establish" the foundation of all of our laws in the Constitution of the United States, U.S. Const., Art. VI, Par. 2, and since it is the unequivocal and indisputable, historically validated fact that it was the intention of the framers of "supreme law of the land" that equal justice for all be founded on the truth; our judicial system must first, and primarily, protect and defend that mandate, U.S. Const., Preamble. Based on the absolutes of the Law of God, given as an unalienable rights, with only the freedom to either obey or disobey the Law above all our laws, the Constitution demands that false witness be

excluded from our courts. Created for the exclusive purpose to "establish justice", the courts must never deny "the equal protection of the laws", U.S. Const., Amd. XIV, § 1, to any citizen, regardless of their education, financial status or ability to engage an attorney, or any other unjust criteria. Justice is not defined by any of our laws, but inexorably and indelibly etched on our hearts by the Creator. The architect of the Constitution, James Madison, stated succinctly that "We have staked the future of all our political institutions upon the capacity of mankind for self-government, upon the capacity of each and all of us to govern ourselves, to control ourselves, to sustain ourselves according to the Ten Commandments of God." There is no separation of Church and state in our order of law.

Where attorneys, licensed in the public trust, as agents of the courts, and held by that license to a higher standard than any lay citizen, violate that license and trust; they attack the very foundation of our government. In this instant cause, where a licensed attorney knowingly and maliciously violated, not only their license and trust, but impugned the very integrity of the judicial branch; they must be held accountable, not just to statute, **28 U.S.C. § 1332**. but to the intent of the Constitution, U.S. Const., Preamble.

When a court becomes a party to the injustice because of their prejudice and discrimination in favor of a fellow member of the bar, and the immediate family member of a judge sitting on the same bench, the judicial branch must consider its condition and ability to fulfill the very intent of the Constitution.

II.

THE U.S. DISTRICT COURT VIOLATED THE FEDERAL RULES OF CIVIL PROCEDURE (U.S. CODE, APPENDIX) IN MISCONSTRUING HIS PETITION

In stating "All pleadings shall be so construed as to do substantial justice.", it is clearly the

intent of Congress in **U.S.C. App., (FRCP, Ch. III, Rule 8f)** to require the courts to uphold the Constitution. By permitting the respondents to escape justice by denying due process, despite all the evidence before it, for any reason, stands in violation of the Constitution and the **U.S. Code**. If this Court were to determine that the lower court's action, apart from not establishing justice, occurred because of prejudice and discrimination; it is an attack on our very foundation of government. Equal justice for all is not to be subverted to perpetuate an unjust bureaucracy, and the tyranny of the bar.

III.

THE U.S. COURT OF APPEALS FOR THE EIGHTH CIRCUIT IGNORED ITS OWN PRECEDENTS, AND THE PRECEDENTS OF OTHER CIRCUITS IN SUSTAINING THE DISTRICT COURT.

The petition to the U.S. District Court was in the form of an affidavit, *Lewis v. Faulkner, 689 F.2d 100, 102 (7th Cir. 1982)*, with abundant supportive evidence attached as exhibits. As a pro se litigant before the Court, rather than misconstruing his pleading to deny him due process, the Court is bound by the supreme law, U.S. Const., Art. VI, Par. 2 and **FRCP, Ch. III, 8**, to afford him "equal protection under the law", U.S. Const., Amd. XIV,§ 1. Indeed by its own action, *Ruotolo v. IRS, 28 F.3d 6 (2nd Cir. 1994)*, the Court introduced into the common law the doctrine of "special solicitude" in order that justice should obtain regardless of education or financial consideration.

Apart from the violation of the constitutional and statutory intent, the Eighth Circuit was in error in sustaining the District Court's dismissal by its own precedent. *see* **App. D**. In effect, dismissal is a summary judgement by the court's own action. In *Simmons v. O'Brien, 77 F.3d 1093 (8th Cir.1996)* and *Sondel v. Northwest Airlines, Inc., 56 F.3d 934 (8th Cir. 1995)*, the 8th Circuit, U.S.

Court of Appeals, reiterated its concern for due process. With the evidence on the District Court record, there were clearly due process concerns to have a jury determine fact based on evidence. Truth, as fact, is requisite that justice may obtain. The courts failed to establish justice by denying due process.

CONCLUSION

For the above reasons, this Petitioner prays that his petition for a writ of certiorari be granted reversing the dismissal of his cause, and remanding his cause to the U.S. District Court for trial, in order that justice may obtained.

More than the injury and damage to an innocent citizen, this horrendous miscarriage of justice speaks unfavorably to an entire community suggesting insecurity brought about by those with wealth or power using the public trust to escape justice. Perhaps the Missouri Constitution, Article I, Section 2, says it most appropriately when it says "that all constitutional government is intended to promote the general welfare of the people; that all persons have a natural right to life, liberty, the pursuit of happiness and the enjoyment of the gains of their own industry; that all persons are created equal and are entitled to equal rights and opportunity under the law; that to give security to these things is the principal office of government, and that when government does not confer this security, it fails in its chief design." (1875)

More important to this great Nation is that the fundamental principle of equal justice for all, as is the primary intent of the Founders as unequivocally conveyed in the Declaration of Independence and the Constitution of the United States, be protected from intrusion by even the people themselves, their representatives, and most certainly their judiciary. It is absolutely necessary that, with liberty, justice for all must prevail for democracy to endure, and in order

. . that this nation, under God, shall have a new birth of freedom - and that government of the people, by the people, for the people, shall not perish from the earth.

Abraham Lincoln, The Gettysburg Address, 1863

Rather than any other motive, this pursuit of justice by the Petitioner is a call for freedom and justice, not just for himself, but for all of those who trust in, and rely upon public officials to protect and defend our Constitutions and the laws of our legislatures. Empowered by faith in the Divinely inspired "supreme law" of our land, this is a humble attempt of a common citizen to seek "justice for all". Instead of yielding to frustration, and the threat of sanctions of injustice, such as have led to the loss of our "domestic tranquility", this is one person enduring discrimination and trusting that this highest court in our land will protect and defend the very freedom and justice intended in our laws. In all instances, the common law must faithfully administer the intent of the Constitution, and abide by statutory law, where even statutory law, itself, is bound by the Constitution. *U.S. Const., Art. VI.* Persons, such as the Respondents, seek to destroy the very instrument which is the foundation of our democracy. In common, they abuse the power of the public trust. There is no common law that is not controlled by our Constitution. *U.S. Const., Art. VI.* No person, even attorneys, should be permitted to use any weapon, be it their education, or license, or social position as a member of the bar, to injure any citizen. Justice demands that the Respondents must be held accountable for their injury to the petitioner.

This Supreme Court is asked to protect and defend this common citizen, from discrimination, and the taking from him, denying due process.

Respectfully submitted, under oath and penalty of perjury, this 24th day of May, 1999, by:

Donald H. Brancato

Donald H. Brancato
11863 Benham Road, Suite 102
St. Louis, Missouri 63138
(314) 355-8642
(314) 355-8688 FAX

UNITED STATES COURT OF APPEALS

FOR THE EIGHTH CIRCUIT

No. 99-1481EMSL

Donald H. Brancato,

Appellant,

v.

Priscilla F. Gunn; Evans & Dixon Law Partnership,

Appellees.

Appeal from the United States District Court for the Eastern District of Missouri

JUDGMENT

This court has reviewed the original file of the United States District Court. It is ordered by the court that the judgment of the district court is summarily affirmed. See Eighth Circuit Rule 47A(a).

March 30, 1999

Order Entered at the Direction of the Court

Michael E. Gans

Clerk, U.S. Court of Appeals, Eighth Circuit

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

FILED
JAN 21 1999
U. S. DISTRICT COURT
EASTERN DISTRICT OF MO
ST. LOUIS

DONALD H. BRANCATO, Plaintiff,

v.

PRISCILLA F. GUNN, et al., Defendants.

No. 4:98-CV-1547-CEJ

ORDER AND MEMORANDUM

This matter is before the Court upon the application of Donald H. Brancato for leave to commence this action without payment of the required filing fee. See 28 U.S.C. § 1915(a). Upon consideration of the financial information provided with the application, the Court finds that the applicant is financially unable to pay any portion of the filing fee. Therefore, plaintiff will be granted leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915(a).

28 U.S.C. § 1915(e)

Pursuant to 28 U.S.C. § 1915(e)(2)(B), the Court may dismiss a complaint filed in forma pauperis at any time if the action is frivolous, malicious, fails to state a claim upon which relief can be granted, or seeks monetary relief against a defendant who is immune from such relief. An action is frivolous if "it lacks an arguable basis either in law or in fact." Neitzke v. Williams, 490 U.S. 319, 325 (1989). An action fails to state a claim upon which relief may be granted if it appears beyond

reasonable doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief. Conley v. Gibson, 355 U.S. 41, 45-46 (1957); Jackson Sawmill Co. v. United States, 580 F.2d 302, 306 (8th Cir. 1978), cert. denied, 439 U.S. 1070 (1979).

In reviewing a pro se complaint under § 1915(e)(2)(B), the Court must give the complaint the benefit of a liberal construction. Haines v. Kerner, 404 U.S. 519, 520 (1972). The Court must also weigh all factual allegations in favor of the plaintiff, unless the facts alleged are clearly baseless. Denton v. Hernandez, 112 S. Ct. 1728, 1733 (1992); Scheuer v. Rhodes, 416 U.S. 232, 236 (1974).

The complaint[1]

Plaintiff seeks monetary relief in this action against defendants Priscilla F. Gunn (a private attorney), and Evans & Dixon (defendant Gunn's law firm). Plaintiff contends that the defendants violated his rights to due process of law by defaming him during proceedings before this Court in Brancato v. St. Louis Community College, No. 4:97-CV-1118-CEJ (E.D. Mo.).

Discussion

Because plaintiff contends that the defendants violated his civil rights, the Court will construe this action as being brought pursuant to 42 U.S.C. § 1983. To state a section § 1983

[1]The Court notes that plaintiff has failed to sign his complaint as required by Rule 11 of the Federal Rules of Civil Procedure. Because the Court will dismiss this action, it will take no further action as to this matter.

claim, a plaintiff must first establish that a person acting under color of state law committed actions which form the basis of the complaint. See, e.g., Parratt v. Taylor, 451 U.S. 527, 535 (1981), overruled on other grounds, Daniels v. Williams, 474 U.S. 327, 328 (1986). However, the defendants, a private attorney and law firm, are not state actors for purposes of § 1983 as the conduct of counsel in representing clients does not constitute action under color of state law. Harkins v. Eldredge, 505 F.2d 802, 803 (8th Cir. 1974) (per curiam) (conduct of counsel, either retained or appointed, in representing client does not constitute action under color of state law).

In accordance with the foregoing,

IT IS HEREBY ORDERED that the Clerk receive and file the complaint in this action without payment of the required filing fee. See 28 U.S.C. § 1915(a).

IT IS FURTHER ORDERED that the Clerk shall not issue process or cause process to issue upon the complaint because the complaint is legally frivolous or fails to state a claim upon which relief may be granted or both. See 28 U.S.C. § 1915(e)(2)(B).

An appropriate order shall accompany this order and memorandum.

Dated this 21st day of January, 1999.

Carol E. Jackson
UNITED STATES DISTRICT JUDGE

UNITED STATES COURT OF APPEALS

FOR THE EIGHTH CIRCUIT

No. 99-1481EMSL

Donald H. Brancato,

Appellant,

v.

Priscilla F. Gunn; Evans & Dixon Law Partnership,

Appellees.

Order Denying Petition for Rehearing and for Rehearing En Banc

The petition for rehearing en banc is denied. The petition for rehearing by the panel is also denied.

(5128-010199)

April 27, 1999

Order Entered at the Direction of the Court:

Michael E. Gans

Clerk, U.S. Court of Appeals, Eighth Circuit

IN THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

DONALD H. BRANCATO,	)	
	)	
Appellant,	)	
	)	Appeal No. **99-1481 EMSL**
PRISCILLA F. GUNN	)	
and;	)	
EVANS & DIXON	)	
	)	
Defendants,	)	

APPELLANT'S PETITION FOR A REHEARING

Appellant, Donald H. Brancato hereby petitions this Court for a rehearing by this United States Court of Appeals for the Eighth Circuit of his appeal of cause No. **4:98-CV-1547-CEJ** dismissed by the U. S. District Court for the Eastern District of Missouri, now before this Court as appeal No.**99-1481 EMSL**.

MEMORANDUM IN SUPPORT OF THE MOTION FOR REHEARING

DONALD H. BRANCATO, pro se, appellant in the above named case, appealed to this United States Court of Appeals for the Eight Circuit from the dismissal of his cause entered in his action by the U.S. District Court. This cause was brought with overwhelming and abundant evidence before the court to support and sustain the merit of this just cause. That district court, prejudicially and with discrimination, misapplied the common law to protect a fellow member of the bar, who is known to it as an immediate family member of a fellow judge in the same court. Outrageously

choosing to misconstrue this appellant's pleadings in order to give false grounds for dismissing his just cause, despite the substantial evidence before it, that court, itself, stands in violation of the express intention of the Fourteenth Amendment to the *Constitution of the United States of America*.

Based on the evidence before it, evincing the libel and slander as claimed in this appellant's petition, that court also ignored the statutory law in its failing to apply the common law as it is to be bound first to statute, and then even statute to the supreme law of our land. Lovilla Coal Co v. Harvey, 109 F.3d 445 (8th Cir.1996). That tyranny by a dictatorship of the bar to unjustly protect a relative of an associate from justice, as is intended to be determined by due process, is but a blatant, thinly veiled violation of our freedom. Such injustice and discrimination by any court strikes at the heart of the foundation of our government. Instead of "liberty and justice for all", this injustice speaks volumes about the state of the judicial system to a people whose forefathers, by the sacrifice of their very lives, resisted tyranny in any form. Power and wealth, certainly not prejudice and discrimination, must never be permitted on the scales of justice. The majority of the common citizens, those without wealth or power, are unable to afford justice in the everyday matters of life. For the above stated reasons alone, this cause, neither frivolous or without merit, supported by evidence, should be remanded to the U.S. District Court for trial by jury.

Further, this Appellant suggests to this Court that it erred in its affirmation of the District Court, when not remanding this just cause to the District Court for a trial by jury stands in clear violation of its own precedents. ***Sondel v. Northwest Airlines, Inc.**, 56 F.3d 934 (8th Cir. 1995)*; ***Simmons v. O'Brien**, 77 F.3d 1093 (8th Cir.1996)*.

This cause is constitutionally relevant to thousands of citizens across our nation.

This common citizen further requests the indulgence of the second highest Court in our land

in his quest for justice under the "supreme law" of our land. Its intent to "establish justice" equally for all gives any court the authority to override even all common law in preserving and defending the clear intention of the foundation of our democracy. This case is of little monetary importance, but to the common citizen seeking justice and unable to afford or engage an attorney, for whatever reason, it is extremely relevant. In this instant cause, the respondents' knowingly and unjustly placed the appellant's means of earning a livelihood in severe jeopardy by their libel and slander. Warned repeatedly about their false witness, they knowingly persisted with their crime before the very court that had with similar prior injustice, prejudice, and discrimination, dismissed another just cause.

THEREFORE, this Appellant prays this Court to rehear his cause, either by panel or en banc; review all the evidence before the district court, whose dismissal of this just cause, offers no just remedy to the many suffering under the tyranny of injustice; and remand this just cause to the district court for a trial by jury.

SUBSCRIBED AND DECLARED, under oath and penalty of perjury, this 5th day of April, 1999, by:

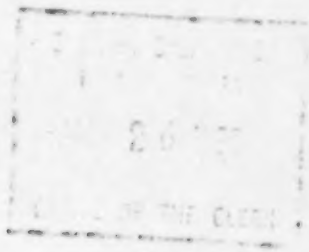
DONALD H. BRANCATO, Appellant

By:_____
Donald H. Brancato
11863 Benham Road, Suite 102
St. Louis, MO 63138
(314) 355-7717

98-9913

PROOF OF SERVICE

I, Donald H. Brancato, do declare, under penalty of perjury, that on this date, May , 1999, as required by Supreme Court Rule 29, I have served by first class mail, postage prepaid, the enclosed Motion for Leave to Proceed *In Forma Pauperis*, and Petition for a Writ of Certiorari, on all parties required to be served.



Per Curiam

SUPREME COURT OF THE UNITED STATES

DONALD H. BRANCATO *v.* PRISCILLA F. GUNN ET AL.

ON MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

No. 98–9913. Decided October 12, 1999

PER CURIAM.

Pro se petitioner Brancato seeks leave to proceed *in forma pauperis* under Rule 39 of this Court. We deny this request as frivolous pursuant to Rule 39.8. Brancato is allowed until November 2, 1999, within which to pay the docketing fees required by Rule 38 and to submit his petition in compliance with this Court's Rule 33.1. We also direct the Clerk not to accept any further petitions for certiorari from Brancato in noncriminal matters unless he first pays the docketing fee required by Rule 38 and submits his petitions in compliance with Rule 33.1.

Brancato has abused this Court's certiorari process. On June 7, 1999, we invoked Rule 39.8 to deny Brancato *in forma pauperis* status with respect to a petition for certiorari. See *Brancato* v. *Connecticut Gen. Life Ins. Co.*, 527 U. S. —. Prior to the Rule 39.8 denial, Brancato had filed six petitions for certiorari, all of which were both frivolous and had been denied without recorded dissent. The instant petition for certiorari thus brings Brancato's total number of frivolous filings to eight.

We enter the order barring prospective filings for the reasons discussed in *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) *(per curiam)*. Brancato's abuse of the writ of certiorari has been in noncriminal cases, and we limit our sanction accordingly. The order therefore will not prevent Brancato from petitioning to challenge criminal sanctions which might be imposed on him. The order will, however, allow this Court to devote

its limited resources to the claims of petitioners who have not abused our processes.

It is so ordered.

JUSTICE STEVENS, dissenting.

For reasons previously stated, see *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1, 4 (1992) (STEVENS, J., dissenting), and cases cited, I respectfully dissent.